Jan. 6. 1873 Field J.—
affirmed Swayne J.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~527.~~ 301 82

WILLIAM F. TAYLOR, BARNABAS ALLEN, AND EDWARD McGUIRE, PLAINTIFFS IN ERROR,

vs.

HENRY G. TAINTOR, TREASURER OF THE STATE OF CONNECTICUT.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

FILED MARCH 17, 1871.

Dec. 2. 1872

SUPREME COURT OF THE UNITED STATES.

No. 527.

WILLIAM F. TAYLOR, BARNABAS ALLEN, AND EDWARD McGUIRE, PLAINTIFFS IN ERROR,

vs.

HENRY G. TAINTOR, TREASURER OF THE STATE OF CONNECTICUT.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

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1 Supreme Court of the United States.

WILLIAM F. TAYLOR, BARNABAS ALLEN, AND Edward McGuire,
vs.
HENRY G. TAINTOR, TREASURER OF THE STATE of Connecticut.

Of the December term, in the year of our Lord one thousand eight hundred and seventy.

Afterwards, to wit, on the first Monday of December, in the same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said William F. Taylor, Barnabas Allen, and Edward McGuire, by Sanford and Seymour, their attorneys, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit: That the declaration aforesaid, and the matters therein contained, are not sufficient in law for
2 the said Henry G. Taintor, as said treasurer, to have or maintain his aforesaid action therefor against the said William F. Taylor, Barnabas Allen, and Edward McGuire. And there is error also in this, to wit, that the supreme court of errors of the State of Connecticut erred and mistook the law in deciding, as matter of law, that the rendition of said McGuire, by the gov'rnor of the State of New York, to the authorities of the State of Maine, (the said McGuire being more particularly described in said record, and whose bondsmen the plaintiffs in error were,) by virtue of said requisition of the gov'rnor of the State of Maine, and the subsequent proceedings with said McGuire, in said State of Maine, was not the act of the supreme law of the land, under the Constitution of the United States, and binding upon the State of Connecticut & all her officers & citizens, or was not the act of the State of Connecticut, (for whose use & benefit said original action was brought & prosecuted, and to whose sole use & benefit said judgment enures,) as one of the United States, and bound by the Constitution of
3 the United States, by force of which Constitution said last-mentioned requisition was granted and made operative; and that, in either aspect, the plaintiffs in error were not fully exonerated from said bond or recognizance when said original action was commenced:

Therefore, that by the record aforesaid, it appears that the judgment aforesaid given, was given for the said Henry G. Taintor, as treasurer of the State of Connecticut, against the said William F. Taylor, Barnabas Allen, and Edward McGuire; whereas, by the law of the land, the said judgment ought to have been given for the said plaintiffs in error against the said defendant in error.

And the said William F. Taylor, Barnabas Allen, and Edward McGuire, plaintiffs in error, pray that the judgment aforesaid may be reversed, annul'ed, and altogether held for nothing; and that they may be restored to all things which they have lost by reason of the said judgment, &c.

SANFORD AND SEYMOUR,
Att'y for Pl'ff in Error.

4 Supreme court of errors.

WM F. TAYLOR ET AL. *vs.* HENRY G. TAINTOR, TREAS. } Writ of error to Supreme Court of U. States.

STATE OF CONNECTICUT, *Fairfield County, ss:*

I, Henry T. Blake, clerk of the said court, hereby certify that the within and foregoing is a true copy of the original assignment of errors in said cause, as on file and of record appears.

In witness whereof I have hereunto set my hand and seal of said court, at Bridgeport, in said county, this 22 day of October, 1870.

[SEAL.] H. T. BLAKE, *Clerk.*

(Indorsed:) Supreme Court of the United States. William F. Taylor, Barnabas Allen, & Edward McGuire vs. Henry G. Taintor, Assignment of errors.

5 Supreme Court of the United States.

WILLIAM F. TAYLOR, BARNABAS ALLEN, AND Edward McGuire, *vs.* HENRY G. TAINTOR, TREASURER OF THE State of Connecticut.

UNITED STATES OF AMERICA, *ss:*

[L. S.] The President of the United States to the honorable the judges of the supreme court of errors of the State of Connecticut, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of errors, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between Henry G. Taintor, treasurer of the State of Connecticut, and Wil-

6 liam F. Taylor, Barnabas Allen, and Edward McGuire, wherein was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution a manifest error hath happened to the great damage of the said William F. Taylor, said Barnabas Allen, and said Edward McGuire, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme

7 Court, to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said

Supreme Court, the 20th day of October, in the year of our Lord one thousand eight hundred seventy.

LOREN P. WALDO,
Clerk of the U. S. Circuit Court for the District of Connecticut.

[5-c't int. rev. stamp canceled.]

Supreme court of errors.

W'M F. TAYLOR ET AL.
vs.
HENRY G. TAINTOR, TREAS. } Writ of error to Supreme Court of U. States.

STATE OF CONNECTICUT, *Fairfield County, ss:*

I, Henry T. Blake, clerk of the said court, hereby certify that the within and foregoing is a true copy of the original writ of error in said cause as on file and of record appears.

In witness whereof I have hereunto set my hand and seal of said court, at Bridgeport, in said county, this 22d day of October, 1870.

[SEAL.] H. T. BLAKE, *Clerk.*

8 (Indorsed:) Supreme Court of the United States. William F. Taylor, Barnabas Allen, & Edward McGuire vs. Henry G. Taintor, treasurer of the State of Connecticut. Writ of error.

9 Supreme Court of the United States.

WILLIAM F. TAYLOR, BARNABAS ALLEN, AND Edward McGuire,
vs.
HENRY G. TAINTOR, TREASURER OF THE STATE of Connecticut.

UNITED STATES OF AMERICA, *ss:*

Norwalk, Fairfield County, State of Connecticut, October 22nd, the year of our Lord one thousand eight hundred and seventy.

To HENRY G. TAINTOR, treasurer of the State of Connecticut:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of errors of the State of Connecticut, wherein William F. Taylor, Barnabas Allen, and Edward McGuire are
10 plaintiffs, and you are defendant, to show cause, if any there be, why the judgment in the said writ of error hereinbefore mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, the 22nd day of October, in the year of our Lord one thousand eight hundred and seventy.

THO'S B. BUTLER,
Chief Judge of the Supreme Court of Errors for the State of Connecticut.

(Indorsed:) Supreme Court of the United States. William F.
11 Taylor, Barnabas Allen, and Edward McGuire vs. Henry G. Taintor, treasurer of the State of Connecticut. Citation.

DISTRICT OF CONNECTICUT,
Hartford County, ss:

HARTFORD, *Nov'r 1st*, 1870.

I then made service of this process by leaving a true and attested copy of the same at the treasurer's office, in the city of Hartford, in said county of Hartford, with my endorsement thereon.

Attest:

P. R. CARLL,
U. S. Marshall.
By PHILO F. BARNUM,
U. S. Deputy Marshall.

Fees: Service, $2 00; travel serv'e & return, $3 24—$5 24.

12 Supreme Court of the United States.

WILLIAM F. TAYLOR, BARNABAS ALLEN, AND Edward McGuire
vs.
HENRY G. TAINTOR, TREASURER OF THE STATE of Connecticut.

Know all men by these presents, that we, William F. Taylor, as principal, and William P. Seeley, as surety, both of Danbury, in the county of Fairfield, and State of Connecticut, are holden and firmly bound unto the treasurer of the State of Connecticut in the sum of ten thousand dollars, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents; that whereas the above-named William F. Taylor, Barnabas Allen, and Edward
13 McGuire, have prosecuted a writ of error to the Supreme Court of the United States to recover the judgment in the above-entitled cause by the supreme court of errors of the State of Connecticut.

Now, therefore, the consideration of this obligation is such that if the above-named William F. Taylor, Barnabas Allen, and Edward McGuire shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and value.

WILLIAM F. TAYLOR. [L. S.]
W'M P. SEELEY. [L. S.]

Sealed and delivered in presence of Tho's B. Butler, chief judge of the supreme court of the State of Connecticut. And I further certify that said obligors, being by me sworn, did justify in the sum of ten thousand dollars, according to law.

[SEAL.]

THO'S B. BUTLER,
Chief Judge, as aforesaid.

[5-c't int. rev. stamp, canceled.

Superior court.

WM F. TAYLOR ET AL. *vs.* HENRY G. TAINTOR, TREAS. } Writ of error to Supreme Court of U. States.

STATE OF CONNECTICUT,
Fairfield County, ss:

I, Henry T. Blake, clerk of said court, hereby certify that the within and foregoing is a true copy of the original bond in said cause, as on file and of record appears.

In witness whereof I have hereunto set my hand and seal of said court at Bridgeport, in said county, this 22 day of October, 1870.

[SEAL.] H. T. BLAKE, *Clerk.*

14 (Indorsed:) Supreme Court of the United States. William F. Taylor, Barnabas Allen, and Edward McGuire vs. Henry G. Taintor, treasurer of the State of Connecticut. Bond.

15 HENRY G. TAINTOR, STATE TREASURER, *vs.* WILLIAM F. TAYLOR, &C. } Motion in error.

Supreme court of errors, February term, 1870.

To the sheriff of the county of Fairfield, his deputy, or either constable of the town of Danbury, within said county, greeting:

By authority or the State of Connecticut you are hereby commanded to summon William F. Taylor and Barnabas Allen, both of said Danbury, and Edward McGuire, whose residence is to the plaintiff unknown, but is believed formerly to have been in the city of New York, and to be at present somewhere in the State of Maine, (if found within your precincts,) to appear before the superior court to be holden at Bridgeport, within and for Fairfield County, on the third Tuesday of December, A. D. 1866, then and there to answer unto Henry G. Taintor, of Hampton, in Windham County, as treasurer of the State of Connecticut, in an action or plea of debt, that to the plaintiff, as treasurer aforesaid, the defendants render the sum of eight thousand dollars, which to the plaintiff, as treasurer as aforesaid, the defendants justly owe, and from him unjustly detain; for that the plaintiff declares and says that he now is, and for more than six months past has been, the treasurer of the State of Connecticut, and that, at the August term of the superior court for Fairfield County, holden at Danbury, within and for said county, on the second Tuesday of August, A. D. 1866, Josiah M. Carter, the attorney for the State for said county, duly appointed, qualified, and sworn, did, on his official oath as such attorney, make, exhibit, and present to said superior court then so sitting at Danbury, as aforesaid, his written complaint or information, in which said written information the said attorney for the State did allege and set forth that said Edward McGuire, (with others,) at Greenwich, in said county, on or about the 6th day of January, A. D. 1866, did feloniously take, steal, and carry away one gold watch of the value of two hundred dollars, four gold certificates, each dated the 30th day of December, A. D. 1865, numbered re-
16 spectively 3354, 3356, 3357, 3358, and each expressed to be for the sum of twenty dollars, and of the value of thirty dollars each,

and two other gold certificates, dated respectively January 3, 1866, and January 5, 1866, and numbered respectively 10321 and 11784, each expressed to be for the sum of one hundred dollars, and each of the value of one hundred and fifty dollars, all the proper goods and estate of Clapp Spooner, and others, of Bridgeport, in said county; and in which said written information the said attorney for the State did further allege and set forth that said Edward McGuire (with others) did, at said Greenwich, on or about the 6th day of said January, feloniously take, steal, and carry away one other gold watch and six other gold certificates, in said information described in all respects as the same are hereinabove described, and of the same value as hereinbefore set forth, all being in said information described as the proper goods and estate of the Adams Express Company, a joint stock company doing business in the city of New York, and not incorporated under and pursuant to the laws of this State; whereupon said attorney for the State did pray that a bench warrant might issue that said Edward McGuire, named in said information, might be arrested and brought before said superior court so then sitting at its August term thereof, as aforesaid, at Danbury, as aforesaid, to answer unto said information, and be thereon dealt with according to law.

Whereupon said superior court, so then and there sitting as aforesaid, did order a bench warrant to issue, and a bench warrant was thereupon issued, commanding the sheriff of Fairfield County or his deputy to arrest the body of said Edward McGuire, named in said information, and him forthwith have before said superior court then sitting at Danbury, in and for said county, to make answer to said complaint and the matters therein contained, and abide the order of the court thereon. And the said Edward McGuire having been duly and legally arrested and brought before said court, pursuant to the command in said bench warrant, and thereupon said superior court did fix the amount of bail to be given with surety by said Edward McGuire, before he should be released from custody after being so arrested as aforesaid, at the sum of eight thousand dollars.

And the plaintiff says that after the adjournment of said August term of said superior court, and while he, the said Edward McGuire, was so holden in custody by virtue of the bench warrant aforesaid, and of a mittimus issued by order of said court, and directed to the sheriff of said county, his deputy, and the keeper of the county jail in said
17 county, dated the 20th day of September, A. D. 1866, the said Edward McGuire as principal, and said William F. Taylor and said Barnabas Allen as sureties, did appear on the 24th day of September, A. D. 1866, before Lyman Keeler, esq., a county commissioner for Fairfield County, at Danbury, in said county, and did then and there, before said Lyman Keeler, as such county commissioner, acknowledge themselves jointly and severally bound in a bond of recognizance, and indebted to the treasurer of the State of Connecticut, in the sum of eight thousand dollars, conditioned that the said Edward McGuire should appear before the superior court, to be holden at Danbury, in said Fairfield County, on the third Tuesday of October, A. D. 1866, to answer to an information of the attorney of the State of Connecticut, in and for Fairfield county, charging the said Edward McGuire with the crime of theft, and abide the order and judgment of said court touching said complaint or the matters charged therein. And the said information, bench warrant, mittimus, and bond have, since the filing of the declaration in this case, been lost, and cannot be produced in court.

And the plaintiff says that afterwards, at the October term of said

superior court, holden at Danbury, within and for Fairfield County, on the third Tuesday of October, A. D. 1866, the said information, so presented as aforesaid by the said attorney for the State, being on file before said court, at its said October term thereof, to prosecute said information; and by order of said superior court, so then and there sitting as last aforesaid, the said Edward McGuire was then and there required to appear, that he might according to law plead and answer unto said information, and that the trial thereon might then and there be had according to law; but the said Edward McGuire then and there, and at all times afterwards, neglected to appear in the said superior court, so sitting as last aforesaid, and then and there made default of appearance. And by the further order of said superior court so then and there sitting as last aforesaid, the said Edward McGuire was then and there three times publicly called to appear then and there in the said superior court, and save himself and his bail, or that he would forfeit his said recognizance, but the said Edward McGuire appeared not.

And by the further order of said superior court so then and there sitting as last aforesaid, the said William F. Taylor and Barnabas Allen were then and there each of them severally three times called in the said superior court then and there to have the said Edward McGuire before said court, who, they, the said William F. Taylor and Barnabas Allen, were bound to have there as aforesaid, or that they,
18 the said Taylor and the said Allen, respectively, would forfeit their said recognizance respectively; but the said Taylor and the said Allen, and each of them, then and there and at all times thereafter neglected and refused to have the said Edward McGuire in and before the said superior court so sitting as last aforesaid, as they and each of them were bound to have, and the said Edward McGuire and the said William F. Taylor and said Barnabas Allen, having made default as aforesaid, said bond of recognizance so entered into by the said defendants as aforesaid then and there became and was and is forfeited.

All which will fully and at large appear by the files and records of said superior court here ready to be seen, and said bond of recognizance so becoming then and there forfeited and payable to the plaintiff as treasurer of the State of Connecticut, as aforesaid, has never been paid, nor any part thereof, but the same is now wholly due and payable; of all which the defendants, to wit, at Danbury, aforesaid, to wit, on the 25th day of October, A. D. 1866, had notice. And by reason of the facts aforesaid, the defendants have become liable to pay the said sum of money mentioned in the said recognizance, and a right of ac has accrued to the plaintiff as treasurer as aforesaid to have and recover of the defendants the sum of eight thousand dollars, the amount of said recognizance; but the defendants have neglected and refused to pay the same, though often requested and demanded, and the same has never been paid, to the damage of the plaintiff, as treasurer as aforesaid, the sum of twelve thousand dollars, to recover which, with just costs, this suit is brought.

Hereof fail not, &c.

Dated at Norwalk, November 17th, A. D. 1866.

JOSIAH M. CARPENTER,
Justice of the Peace.

The within and foregoing is a true and attested copy of the original writ and summons.

Attest:

ALFRED A. HEATH,
Deputy Sheriff.

Superior court, ss., March term, 1869.

By order of the court the above copy is substituted in place of the original declaration, which is lost.

H. T. BLAKE,
Assistant Clerk.

19 Superior court, Fairfield Co.

HENRY G. TAINTOR, STATE TREASURER,
vs.
WILLIAM F. TAYLOR, &c.

Defendants' plea.

The defendants deny the truth of the material allegations contained in the plaintiff's declaration, and thereof put themselves on the court for trial.

Defendants by their attorneys,
AVERILL & BREWSTER AND SANFORD.

Plaintiff likewise,
By WHITE AND BEARDSLEY,
His Attorneys.

The plaintiff will take notice that on the trial of this case under the general issue, the defendants will offer to prove and will claim and insist that no such bond as in said declaration is alleged, or any legal bond whatever duly issued, was given by said defendants; that no such mittimus as in said declaration alleged, nor any legal mittimus whatever, was issued by order of the said superior court of Fairfield County, to hold said Edward McGuire in custody during the August term of said court in the year 1866; nor had any mittimus been issued at the end of said term, but said Edward McGuire was then unlawfully detained in custody and without legal process; and the said bond thereafter given was wholly void, and of no effect in law, and was given under duress.

And said Edward McGuire, after his release from custody, on said 24th day of September, A. D. 1866, by said County Commissioner Lyman Keeler, by virtue of said pretended bond, and before the calling of said pretended bond in said declaration of the plaintiff described, at the October term, in the year 1866, of said superior court, in and for said county of Fairfield, and before it was the duty of the defendants, as sureties in said pretended bond, to have the said Edward McGuire to appear before said superior court, was, in the State of New York, on the 16th day of October, A. D. 1866, demanded by the governor of the State of Maine, of the governor of the State of New York, and on the 16th day of October, 1866, ordered by said governor of the State of New York to be delivered to the governor of the State of Maine, according to the provision of the Constitution of the United States in such case provided; and he, the said Edward McGuire,
20 on the 19th day of October, 1866, was so delivered over, in compliance with the said requisition of the said governor of the State of Maine, as said McGuire was then charged with having committed, before any of the proceedings in said declaration of the plaintiff described, the crime of burglary in said State of Maine. And said

McGuire was, by the officers of the law, under and by virtue of said requisition, on said 19th day of October, 1866, removed and taken by force to said State of Maine, and confined in prison in the county of Sagadahoc, in said State of Maine, by the proper authorities of said State, and was so confined and detained by irresistible compulsion and authority of said State of Maine, at the time when said alleged bond was called at the said October term of said superior court of the county of Fairfield, namely, on the 24th day of October, 1866, and by reason of said confinement could not be present at said court, nor could be delivered by the said defendants, who were thus prevented from having him in court according to the terms of said alleged bond, by the act of the law, to which act the State of Connecticut, for whose benefit the plaintiff sues, was a party, as one of the United States, whose Constitution provides for the surrender and rendition of a fugitive from justice by one State to another on demand of the executive authority of the State having jurisdiction of the crime committed by such fugitive, and said McGuire ever since has been and now is lawfully confined in the State prison of said State of Maine, and under sentence of imprisonment for the term of fifteen years from June, 1867.

And the defendants claim and will prove that they were, at the time of giving said bond, ignorant of the fact that said McGuire was guilty or suspected of the crime, on accusation of which said requisition was obtained, and were first made aware of it on the day on which the said bond was called, when said defendants immediately made a motion to said superior court for an extension of time, and that said bond should not be called until such time as the defendants might reasonably have to procure said McGuire from said State of Maine, which motion was refused, and said bond called and entered as forfeited on said 24th day of October, 1866, both as to said principal and sureties, and was not otherwise called than as aforesaid.

21 Superior court, Fairfield County, March term, 1869.

HENRY G. TAINTOR
vs.
WILLIAM F. TAYLOR, &c.

Upon the trial of the above cause to the court upon the plea of the general issue, with notice as on file, I find that all of the allegations in the declaration are proven and true, except so far as they, or either of them, may be modified or contradicted by the following, which are found to be facts, in which case they are true only to the extent as modified, and when contradicted, untrue. The said McGuire was put on trial, to the jury, on his plea of not guilty at said August term of 1866, and the jury failed to agree. Afterwards, and on the sixteenth day of said term, which was the 11th day of September, 1866, said court ordered said bail to be given, and fixed the amount thereof at $8,000. Afterwards, and previously to the adjournment of said term, said State's Attorney Carter, because he deemed the jail at Danbury insecure, made a motion to the court for an order removing said McGuire and other prisoners from said jail at Danbury, to the jail at Bridgeport, and the court declined to make such order for the reason that it had no right to make the same, and the judge, then holding said term, added that the said McGuire and other prisoners were in custody, and under the charge of the sheriff. Neither the mittimus described in the declaration, nor any other mittimus for holding said McGuire in custody was issued during said August term of

said superior court. Said term was adjourned without day on the 20th day of September, 1866. Afterwards, viz, on the 22d day of said September, and before the commencement of any other term of said superior court, the sheriff, finding there was no mittimus to hold said McGuire in custody, procured from the clerk of said superior court the mittimus as described in the declaration, except that the same was written out by said clerk on said 22d day of September, and dated on the 20th day of said September, and except farther that it directed him to hold in custody not only the said McGuire, but also

and shortly thereafter, viz, on the 24th day of September, 1866, the defendants made and executed their bail bond, as set forth in the declaration.

The said McGuire, after the failure of the jury to agree as aforesaid, remained in the custody of the sheriff until said 24th day of September, 1866, when he was released from custody upon the execution of said bail bond as aforesaid.

22 After the receipt of said mittimus the sheriff did not formally arrest said McGuire, or inform him of its existence. On the 6th day of the October term of 1866, of the superior court for said Fairfield County, viz, on the 23d day of October, 1866, said bail bond was called and forfeited. On the same day, and previously thereto, one of said defendants, William F. Taylor, acting as counsel for said McGuire and for himself and his co-surety as bondsmen, made motion before said court for the continuance of said case against said McGuire for the reason, as hereinafter stated, that said McGuire had been taken to the State of Maine on a requisition from the governor of that State, which motion was refused by said court, and said bail bond immediately thereafter forfeited.

The said McGuire belonged to the State of New York, and while in said State, in the month of October, 1866, and before the day when said bail bond was called and forfeited, was taken and seized by the legal officers of the State of New York, upon the mandate of the governor of the State of Maine, and against his, the said McGuire's, will, taken from the State of New York by the duly and legally authorized agents and officers of the State of Maine, upon the delivery over to them of said McGuire by the officers of New York, in the State of New York, and was forthwith, on the 19th day of October, 1866, forcibly removed and taken to the State of Maine, said requisition setting forth a charge of burglary committed in said State of Maine before the giving of said bond by said McGuire and the defendants. And that said McGuire was, at the time of the calling of said bond in the superior court as aforesaid, legally imprisoned in the State of Maine on said charge of burglary by the legal offices of said State of Maine, and has been legally confined and imprisoned in said State of Maine ever since said removal thereto in October, 1866. That, in 1867, said McGuire was tried on said charge of burglary, alleged to have been committed by him in said State of Maine, and found guilty thereof by a jury of the county of Sagadahoc, in said State, and by the court of said county lawfully sentenced to the State's prison of said State for the term of fifteen years from the day of June, 1867, and that said McGuire is now serving out his time on said sentence in said State's prison in said State of Maine.

That neither of the said defendants, Taylor or Allen, knew at the time of the execution of said bond that there was any charge of crime against said McGuire, other than the one charged against him in the information described in the declaration.

The plaintiff offered testimony to prove, and if such testimony
23 be admissible, did prove, that the sum of $8,000, in lawful currency of the United States, was placed in the hands of said Taylor and Allen to indemnify them for giving said bail bond.

To the offer of this testimony the defendants objected, but claimed, if said testimony were admissible, the right to prove, and offered testimony to prove, and, if the same be admissible, did prove, that said sum of $8,000 was not placed in their hands by said McGuire, or in his presence, or by any agent of his on his behalf; and, so far as they knew, it was done without the knowledge of said McGuire.

MINOR, *Judge.*

Reserved.

MINOR, *Judge.*

Superior court, March term, 1869.

HENRY G. TAINTOR
vs.
W'M F. TAYLOR, &C.

This court doth make a finding of the facts proved on the trial of said cause, and doth reserve the same and the questions of law arising thereon, and what judgment should be rendered in said cause, for the consideration and advice of the supreme court of errors next to be holden at Bridgeport, in and for said county, on the 2d Tuesday of October, 1869.

H. T. BLAKE, *Ass't Clerk.*

Superior court, Fairfield County, October term, 1869.

HENRY G. TAINTOR
vs.
WILLIAM F. TAYLOR, &C.

The court, on the facts stated in said finding of facts, which is hereby by the court made a part of the record in this case, pursuant to the statute in such case made and provided, found in favor of the plaintiff and against the defendants, and thereupon rendered judgment for the plaintiff to recover of the defendants the sum of eight thousand dollars debt and his costs.

And now the defendants, believing that the court erred and mistook the law in rendering said judgment, file this their motion in error,
24 and pray that the record in this case may be transmitted to the supreme court of errors, next to be held at Bridgeport, in and for said Fairfield County, on the first Tuesday of February, 1870, for the correction of the manifest errors therein contained.

And for causes of error the defendants specially assign the following, to wit:

That the court erred and mistook the law in deciding, as matter of law, that the rendition of said McGuire, by the governor of the State of New York, to the authorities of the State of Maine, by virtue of the said requisition of the governor of the State of Maine, and the subsequent proceedings with said McGuire in said State of Maine, was not the act of the supreme law of the land under the Constitution of the United States, and binding upon the State of Connecticut, and all her officers

and citizens, or was not the act of the State of Connecticut, for whose use and benefit this suit was brought and is prosecuted, as one of the United States, and bound by the Constitution of the United States, by force of which Constitution said last-mentioned requisition was granted and made operative, and that in either aspect the defendants were not fully exonerated from said bond or recognizance when this suit was commenced. Wherefore the defendants say said judgment ought to be reversed.

And the defendants here in court offer to give to the adverse party sufficient security by recognizance to pay all damages if they fail to prosecute this their said motion to effect, and pray a stay of execution.

W'm F. Taylor, esq., of Danbury, is recognized in $100 to prosecute this motion to effect, and answer all damages, if defendants shall fail to make their plea good.

H. T. BLAKE, *Clerk.*

And the court hereby makes this its certificate as a part of the record in this case, that the plea and notice filed in said case were and are in the due and usual form, according to the legal and statutory course of pleadings and practice in the State of Connecticut; and that said notice, by virtue of the statute law of said State of Connecticut, was equivalent to and stood in the place of, and was as much a part of the record in said case as a special plea or pleas at common law could or would be if duly drawn, and setting up the same defense and state of facts for the purpose of laying the foundation for the admission of evidence;
25 and that all the matters of defense set up and stated in said plea and notice were in issue in the trial of this case, the facts set up in said notice, being found true, in so far forth as the finding of this court herewith annexed, and made part of this record, finds them to be true.

And the court farther certifies as a part of the record in this case that the decision in this case was and is against the claims of the defendants and that judgment has been rendered against them.

WILLIAM T. MINOR,
Judge of the Superior Court.

At a superior court holden at Danbury, in and for the county of Fairfield, on the 3d Tuesday of October, A. D. 1869—

Present, Hon. William T. Minor, judge.

HENRY G. TAINTOR OF HAMPTON, IN WINDHAM County, as treasurer of the State of Connecticut, plaintiff,

vs.

WILLIAM F. TAYLOR AND BARNABAS ALLEN, BOTH of said Danbury, and Edward McGuire, of residence unknown, but believed formerly of New York City, and now of State of Maine, defendants.

In an action or plea of debt on bond, demanding $8,000 damages, by writ on file, dated November 17, 1866.

This action first came to this court at its December term, 1866, when said parties appeared, and thence by legal continuances to the March term, 1869, when said parties again appeared, and were at issue upon

the defendants' plea of the general issue, with notice, as on file. And upon said issue said parties having been fully heard before the court and the evidence thereon considered, the court did make a finding of the facts proved in said cause, as a part of the record therein, and did reserve the same and the questions of law arising thereon, and the question what judgment should be rendered in said cause, for the consideration and advice of the supreme court of errors, then next to be held in and for said county.

And now at the present term of this court, said parties having again appeared, this court did, in pursuance of the advice of
26 said supreme court of errors, duly transmitted and received, find the issues of fact and of law in said cause in favor of the plaintiff, and thereupon rendered judgment in his favor, that he recover of the defendants the sum of $8,000 damages, and his costs, taxed at $165 77. And thereupon and within twenty-four hours next after said judgment, the defendants claiming to be aggrieved thereby made and filed their motion in error as on file.

Upon consideration, this court doth allow said motion, and doth thereupon order that the record in said cause be transmitted for the revision of the alleged manifest errors therein to the supreme court of errors, next to be holden at Bridgeport, in and for said county, on the first Tuesday of February, 1870, with stay of execution.

Wm F. Taylor, of Danbury, is recognized in $100 bonds for the prosecution of said motion to effect.

Test:

H. T. BLAKE,
Clerk of Superior Court.

HENRY G. TAINTOR, STATE TREASURER,
vs.
WILLIAM F. TAYLOR, &C.

The above and foregoing is a true copy of all the files and proceedings and of the record, in the above-entitled cause.

Examined and certified by

H. T. BLAKE,
Clerk of Superior Court.

27 At a supreme court of errors holden at Bridgeport, in & for the county of Fairfield, on the 2d Tuesday of October, 1870.

HENRY G. TAINTOR, AS TREASURER OF THE State of Connecticut,
vs.
WILLIAM F. TAYLOR AND BARNABAS ALLEN, both of Danbury, in said county, and Edward McGuire, late of New York City and State.

In a motion in error duly brought from the superior court holden in and for s'd county to this court, as on file.

On motion as aforesaid, the record in this cause was duly transmitted by the superior court, holden in and for s'd county, at its October term, 1869, to this court at its February term, 1870, to be here proceeded with as a writ of error, as by a certified copy of said record

on file in this court may appear; and at said February term said parties appeared and said cause was legally continued to the present term.

And now, at the present term of this court, said parties again appeared and were fully heard, and this court having carefully in-
28 spected said record and duly considered thereon, is of opinion and doth adjudge that in the said record of the superior court, and in the judgement of said court founded thereon there is nothing erroneous; and doth thereupon consider that the said judgement be, and the same is hereby, affirmed for the full amount thereof, and that the defendant in said motion recover of the plaintiff therein his costs taxed and allowed at $, and that execution issue therefor.

Test: HENRY T. BLAKE,
Clerk of said Supreme Court of Errors.

STATE OF CONNECTICUT,
Fairfield County, ss :

BRIDGEPORT, *October* 21, 1870.

I, Henry T. Blake, clerk of the superior court of s'd State, & of the supreme court of errors within and for s'd county, hereby certify that the above & foregoing is a true copy of record as on file in said supreme court of errors appears.

In witness whereof, I have hereunto set my hand and the seal of said supreme court of errors, at Bridgeport, on the day & year aforesaid.

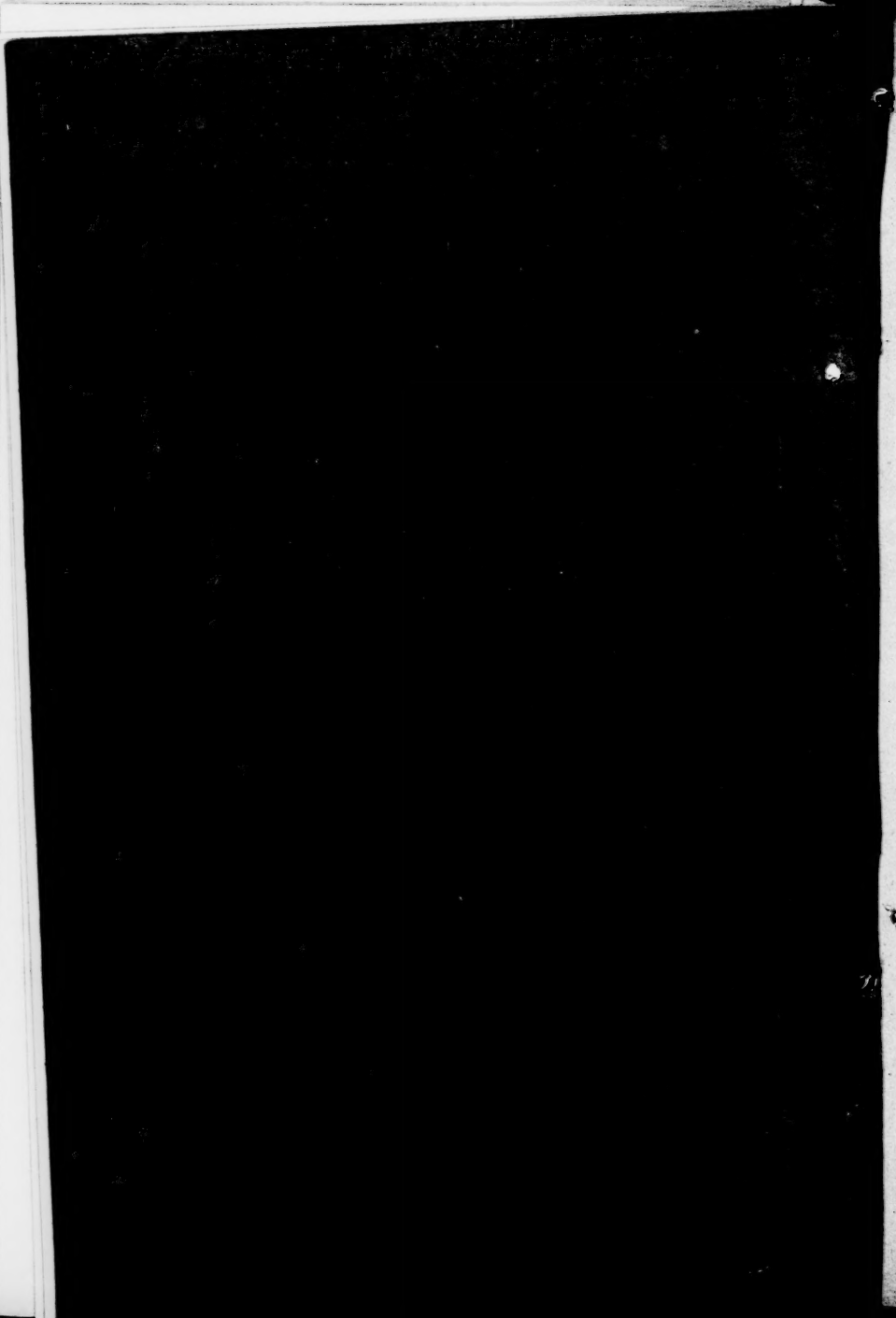
[SEAL.] HENRY T. BLAKE,
Clerk of s'd Supreme Court of Errors.

[2-ct int. rev. stamp, canceled.]

29 (Indorsed:) Supreme Court of the United States. William F. Taylor, Barnabas Allen, and Edward McGuire vs. Henry G. Ta'ntor. Record.

(Indorsed:) Henry G. Taintor, State treasurer, vs. W'm F. Taylor et al. Record.

(Indorsement on cover:) No. 527. William F. Taylor, Barnabas Allen, and Edward McGuire, plaintiffs in error, vs. Henry G. Taintor, treasurer of the State of Connecticut. Connecticut sup. ct. of errors. Filed 17th March, 1871.



Supreme Court of the United States.

No. 82.

WILLIAM F. TAYLOR, BARNABAS ALLEN AND EDWARD McGUIRE, PLAINTIFFS IN ERROR.

vs.

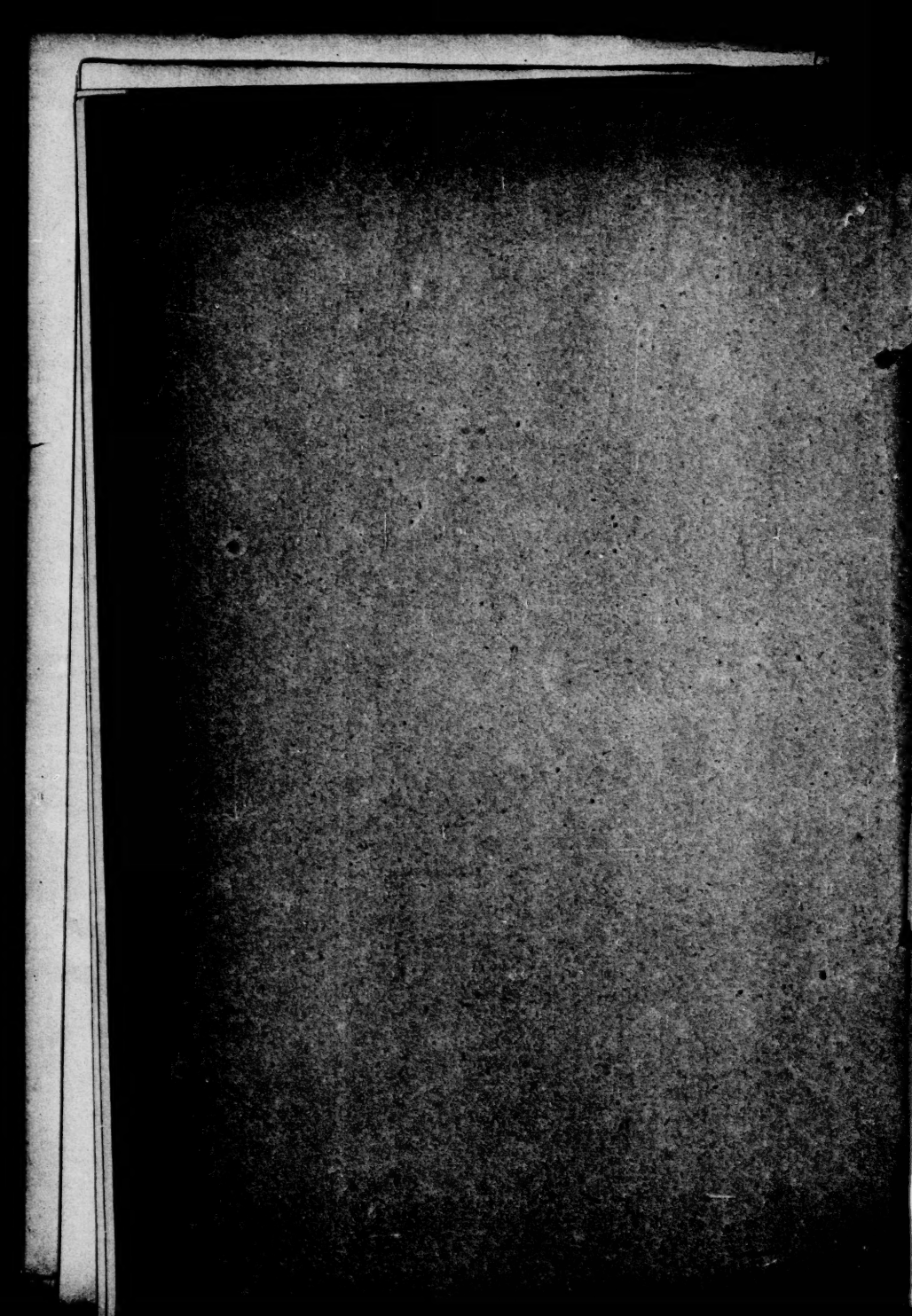
HENRY G. TAINTOR, TREASURER OF THE STATE OF CONNECTICUT, DEFENDANT IN ERROR.

ABSTRACT AND BRIEF

FOR THE

PLAINTIFFS IN ERROR.

WILLIAM F. TAYLOR,
MORRIS W. SEYMOUR, } of Council.



SUPREME COURT OF THE UNITED STATES.

No. 82.

WILLIAM F. TAYLOR, BARNABAS ALLEN AND EDWARD McGUIRE, PLAINTIFFS IN ERROR.

vs.

HENRY G. TAINTOR, TREASURER OF THE STATE OF CONNECTICUT.

BRIEF, POINTS AND ARGUMENT, FOR THE PLAINTIFFS IN ERROR.

ABSTRACT OF RECORD.

WRIT:

Issued Nov. 17th, A. D. 1866, brought by Henry G. Taintor, as Treasurer of the State of Connecticut, summoning William F. Taylor, Barnabas Allen and Edward McGuire, to appear at the December Term of the Superior Court, to be holden at Bridgeport, in and for Fairfield County, on the 3d Tuesday of December, A. D. 1866: There to answer to an action of debt, that to the plaintiff, as such Treasurer, the defendants render the sum of eight thousand dollars, on a certain bond of recognizance; which the said McGuire, as principal, and the said Taylor and Allen, as sureties, entered into, on the 24th day of September, 1866; conditioned that the said McGuire, should appear before the Superior Court, next to be holden, after the date of said recognizance, at Danbury, in and for said County, then and there to answer to a certain criminal charge. A breach of the condition is alleged A demand for twelve thousand dollars and costs, and judgment prayed for.—*pp.* 5, 6, 7, *Record.*

PLEA: GENERAL ISSUE, WITH NOTICE BY THE DEFENDANTS.

That the defendants would offer evidence to prove, among other things, that said Edward McGuire, after he was released from custody, on said 24th

day of September, A. D. 1866, by one Lyman Keeler, County Commissioner, mentioned in the plaintiff's declaration. By virtue of said pretended bond, and before the calling of said pretended bond, in said declaration of the plaintiff described, at the October Term, in the year 1866, of said Superior Court, and before it was the duty of the defendants, as sureties in said pretended bond, to produce the said Edward McGuire, before said Superior Court, the said McGuire was, in the State of New York, on the 19th day of October, A. D. 1866, demanded by the Governor of the State of Maine, of the Governor of the State of New York, and on said day, ordered by said Governor of the State of New York to be delivered to the Governor of the State of Maine, according to the provision of the Constitution of the United States in such case provided; and the said Edward McGuire, on the said 19th day of October, 1866, was so delivered over, in compliance with the said requisition, of the said Governor of the State of Maine, as said McGuire was therein charged with having committed, before any of the proceedings in said declaration of the plaintiff described, the crime of burglary in the State of Maine. And said McGuire was, by the officers of the law, under and by virtue of said requisition, on said 19th day of October, 1866, removed and taken by force, to said State of Maine, and confined in prison, in the County of Sagadahoc, in said State of Maine, by the proper authorities of said State, and was so confined and detained, by irresistible compulsion and authority of said State of Maine, at the time when said alleged bond was called, at the said October Term of the said Superior Court of the County of Fairfield, namely, on the 24th day of October, 1866. And by reason of said confinement could not be present at said Court, nor could be delivered by the said defendants, who were thus prevented, from having him in Court, according to the terms of said alleged bond, by the act of the law, to which act, the State of Connecticut, for whose benefit the plaintiff sues, was a party, as one of the United States, whose Constitution provides for the surrender and rendition of fugitives from justice, by one State, to another, on demand of the executive authority of the State having jurisdiction of the crime committed by such fugitive. And said McGuire ever since has been, and now is, lawfully confined in the State Prison of said State of Maine; and under sentence of imprisonment for the term of fifteen years from June, 1867. And the defendants claim and will prove, that they were, at the time of giving said bond, ignorant of the fact, that said McGuire was guilty or suspected of the crime, on accusation of which, said requisition was obtained, and were first made aware of it, on the day on which the said bond was called; said defendants immediately made a motion to said Superior Court, for an extention of time, and that said bond, should not be called until such time, as the defendants might reasonably have, to procure said McGuire from said State of Maine. Which motion was refused and said bond called and entered as forfeited, on said 24th day of October, 1866, both as to said principal and sureties, and was not otherwise called then as aforesaid.—*pp.* 8, 9, *Record.*

Issue joined.—*p.* 8, *Record.*

RECORD OF THE FINDING OF FACTS.

It was proved on the trial of the case before Judge Minor, at the March Term of the Superior Court, A. D. 1867, as follows:

"The facts alleged in the declaration are true, except so far as they are modified or contradicted by the following: The said McGuire was

put on trial to the jury on his plea of not guilty, at the August Term, 1866, and the jury failed to agree. Afterwards, on the 11th day of September, 1866, the Court ordered the prisoner admitted to bail, and fixed the amount thereof at eight thousand dollars. On the 24th day of September, 1866, McGuire was released on execution of the bail bond in the declaration mentioned. The said McGuire belonged in the State of New York, and while in said State, in the month of October, 1866, and before the day when said bail bond was called and forfeited, was taken and seized, by the legal authorities of the State of New York, upon the mandate of the Governor of the State of Maine, and, against his will, taken from the State of New York, by the duly and legally authorized agents and officers of the State of Maine, upon the delivering over to them, of said McGuire by theofficers of New York, in the State of New York, and was forthwith, on the 19th day of October, 1866, forcibly arrested and taken to the State of Maine, said requisition setting forth a charge of burglary, committed in said State of Maine, before the giving of said bond by said McGuire and the defendants. And that the said McGuire was, at the time of the calling of said bond, in the Supreme Court of the State of Connecticut, as aforesaid, to wit, on the 23rd day of October, A. D 1866, legally imprisoned in the State of Maine, on said charge of burglary, by the legal officers of said State of Maine, and has been legally confined and imprisoned, in said State of Maine, ever since said removal thereto in October, 1866.

That in 1867 the said McGuire was tried on said charge of burglary, alleged to have been committed by him in said State of Maine, and found guilty thereof, by a jury of the County of Sagadaboc, in said State, and by the Court of said County, lawfully sentenced to the State Prison of said State for a period of fifteen years, and is aow serving out his time.

That neither of the said defendants, Taylor nor Allen, knew at the time of the execution of said bond that, there was any charge of crime against said McGuire other than the one charged against him in the information upon which they became sureties.—*pp.* 9, 10, 11, *of Record.*

The case was reserved, on these facts, for the advice of the Supreme Court of Errors, as to what judgment should be rendered.—*p.* 11 *of Record.*

The Supreme Court of Errors, having heard the case and duly considered the matter, advised the Superior Court to render judgment for the plaintiff —and on the 3d Tuesday of October, 1869, the Superior Court, in pursuance of the advice of said Court, duly transmitted and received, found the issues of fact and law in said case in favor of the plaintiff, and thereupon rendered judgment in his favor, to recover of the defendants the sum of eight thousand dollars and his costs.—*p.* 13 *of Record.*

At the same term of the Court, a writ of error was brought to the Supreme Court of Errors, alleging that the Superior Court erred and mistook the law, in deciding as matter of law, that the rendition of said McGuire, by the Governor of the State of New York ,to the authorities of the State of Maine, and the subsequent proceedings in said State of Maine, was not the act of the Supreme Law of the Land under the Constitution of the United States and binding on the State of Connecticut and all her officers—*pp.* 11, 12, *of Record.*

At a Supreme Court of Errors, holden at Bridgeport, in and for the County of Fairfield, on the 2d Tuesday of October, 1870, *final judgment*

was rendered against the claim of the defendants and the judgment of the Superior Court affirmed.—*p.* 14 *of Record.*

In reference to the plea *and notice*, which is statutory and peculiar to Connecticut, the Court makes the following certificate:

CERTIFICATE OF THR COURT.

"And the Court hereby makes this its certificate, as a part of the record in this case, that the plea and notice filed in said case, were and are in the due and usual form, according to the legal and statutory course of pleadings and practice, in the State of Connecticut: and that said notice, by virtue of the statute law of the State of Connecticut, was equivalent to and stood in the place of and was as much a part of the record in said case, as a special plea or pleas at common law could or would be, if duly drawn, and setting up the same defense and state of facts, for the purpose of laying the foundation for the admission of evidence; and that all the matters of defense set up and stated in said plea and notice, were in issue, in the trial of this case, the facts set up in said notice being found true, in so far forth as the finding of this Court, herewith annexed and made part of this record, finds them to be true. And the Court further certifies, as a part of this record, in this case, that the decision in this case was and is against the claims of the defendants, and that judgment has been rendered against them.

Writ of Error bringing the case before this Court.—*pp.* 2, 3, *of Record.*

Assignmedt of Errors.—*p.* 1 *of Record.*

STATEMENT OF FACTS.

At the August Term of the Superior Court, in and for Fairfield County, one Edward McGuire was tried on a charge of theft. The jury failing to agree, he was on the 24th day of September, in the same year, admitted to bail in the sum of $8,000, and he as principal, and Wm. F. Taylor and Barnabas Allen as sureties, became recognized in that sum, to the Treasurer of the State of Connecticut, for the appearance of said McGuire at the next term of the Superior Court. The residence of said McGuire being in the State of New York, he immediately went there, and while at large in said State of New York, and before the next Term of the Court, to which he was bound by the recognizance to appear; to wit, on the 19th day of October, 1866, was arrested by the authorities of the State of New York, on a requisition of the Governor of the State of Maine, and forcibly removed and taken to the State of Maine, by virtue of said requisition. On the 23rd day of October, 1866, and before the bond on which this suit was instituted, had been called and forfeited, a motion was *made* to continue the case against McGuire, on behalf of the sureties, setting forth the facts herein stated, but the motion was denied and the bond called and forfeited. On the 17th day of March, 1866, this suit was instituted against the parties to the bond for breach of condition. At the March Term of the Superior Court, 1869, when the case came on for trial, the defendants plead the *general issue*, and in conformity to the practice of the State of Connecticut, *gave notice*, that they would offer evidence to prove, among other things, that the removal of McGuire, against his will, from the State of New York by virtue of a requisition of the Governor of the State of Maine, on the Governor of the State of New York, and his confinement in the former State, and by reason thereof, he could not be delivered by the defendants, who

were thus prevented from having him in Court, according to the terms of said bond, "*by act of the Law*," to which act, the State of Connecticut, for whose benefit the plaintiff sues, was a party, as one of the United States, whose Constitution provides for the surrender and rendition of fugitives from justice, by one State to another, on demand of the executive authority.—*p. 9 of Record.*

In speaking of this notice, which is statutory and peculiar to Connecticut, Judge Minor in his certificate on p. 12 of the Record says, "that it puts in issue the facts therein stated the same as a special plea at common law."

The Superior Court rendered no judgment on the trial, but reserved the question of law arising on the finding of facts, which is made a part of the Record, for the advise of the Supreme Court of Errors.

The advice of that Court was, that judgment be rendered for the plaintiff for the sum of $8,000 and costs, and thereupon, at the proper time, that judgment was rendered in the Superior Court. From which judgment an appeal was taken, by writ of error, to the Supreme Court of Errors, the *highest court of law and equity* in the State, which again affirmed its former decision and found no error, to review which judgment, this writ of error is brought.

The simple question presented to your Honors for consideration is:

Whether the rendition of McGuire on the requisition of the Governor of the State of Maine, and the consequent inability of his sureties to produce him at Court on the return day, was such an "act of the law" as would excuse the non-performance of the condition of the bond?

In the Court below we contended, that the rendition was by virtue of the 2d Section of the 4th Article of the Constitution; and the laws of Congress passed in pursuance thereof, and was therefore an "act of the law" which, since we could not resist, was bound to protect us in the non-performance of that which it prevented.

It is conceded that if the performance of the bond, had been rendered impossible by the act of the law, of the State in which the bond was given: that the State could not have enforced the condition. In delivering the opiniou of the Court in this case, when tried in Connecticut, Park Judge, in discussing whether these defendants were excused or not, says: "What is meant by the Act of the law is, the law of the State or country where the obligation is entered into. There is reason why this law should be an excuse, but there is no reason why the law of an other State should be."

The Court below having decided against our claim, we contend that they erred.

First: In deciding that the rendition of McGuire was not done by virtue of the Constitution and laws of the United States.

Secondly: In deciding that the Constitution and laws of Congress passed in pursuance thereof, had not the same force and effect in the State of Connecticut as the laws of that State itself would have.

The 2d Section of the IVth Article of the Constitution is as follows:

"A person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

The Act of Febrnary 12th, 1793, Chap. VII, is:

"Whenever the executive authority of any State in the Union, or of either of the territories, northwest, or south of the Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such State or Territory to which such person shall have fled, and shall moreover produce the copy of an indictment found or an affidavit made, before a magistrate of any State or Territory as aforesaid, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or chief magistrate of the State or Territory from whence the person so charged, fled, it shall be the duty of the executive authority of the State or Territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear; but if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs and expenses incurred in the apprehending, securing and transmitting such fugitive to the State or Territory making such demand shall be paid by such State or Territory.

"SEC. 2. Any agent appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the State or Territory from which he or she shall have fled. And if any person or persons shall by force, set at liberty or rescue, the fugitive from such agent while transporting as aforesaid the person or persons so offending shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year."

Was or was not the rendition of McGuire effected by virtue of these several enactments?

The plea sets up the defence that he was taken from the power of his sureties and by the Governor of the State of New York delivered to the Governor of the State of Maine, according to the provisions of the Constitution of the United States in such cases provided. All the facts set up in that defense are by the Record of this finding of facts, found expressly to be true, except where they are contradicted. The language is, McGuire "was taken and seized by the legal officers of the State of New York, upon the mandate of the Governor of the State of Maine, and against his will taken from the State of New York by the duly and legally authorized agents and officers of the State ef Maine, upon the delivery over to them of said McGuire by the officers of New York, and taken to the State of Maine, *said requisition* setting forth a crime of burglary."

Bouvier, in his law Dictionary, gives this definition to the word requisition: "The demand made by the Governor of one State on the Governor of another for a fugitive, under the provisions of the United States Constitution."

It was not contended in the Court below, that the removal of McGuire was otherwise effected, than by a requisition legal in form, and will not here be disputed. By what other power could this rendition have been effected? No inherent power existed in the authorities of the State of Maine to reach one inch beyond her territorial boundaries to reclaim this fugitive from justice, except by virtue of the Constitutional provision and the laws passed in pursuance of it. Whatever may have been the duties and privileges existing prior to the adoption of the Constitution, that instrument has now defined and settled, the precise boundaries of the obligation to surrender, and taken the whole subject under its jurisdiction and cognizance, and the surrender is now governed by the laws of the United States, and enforced under those laws. Parker, C. J., in speaking on this subject in Commonwealth vs. Green, 17 Mass., p. 547, says: "The Constitution has made that obligatory between the States which between nations, entirely foreign to each other, was done from comity.

We claim further, that the whole power, in relation to the delivery of fugitives from justice (and labor) has been delegated to the United States. That Congress has regulated the manner and form, in which it shall be exercised. That that power is exclusive. That State legislation has no right to interfere, and if it does the act is void and of no effect.

Mr. Justice Story, in delivering the opinion of this Court in the case of Prigg vs. The Commonwealth of Pennsylvania, 16 Peters, p. 617, says, speaking of this Article of the Constitution and the acts of Congress passed in pursuance of it, both as to fugitives from justice and from labor, "that it covers both subjects in its enactments. And upon just principles of construction, the legislation of Congress, if Constitutional, must supersede all State legislation upon the same subject, and by necessary implication prohibit it." In Houston vs. Moore, 5 Wheaton R. 1, 2, 23, it is expressly held, that when Congress has exercised a power over a particular subject given it by the Constitution, it is not competent for State legislation to add to, the provisions of Congress upon that subject. In *ex parte* Smith, 3rd McLean, C. C. R. p. 129, Judge Pope, says: "The functions performed by the Governor on the arrest of fugitives from justice, are under the laws of the United States and not of the particular State;" and again, p. 131, "Smith is in custody under color of and by authority of the 2d Section, 4th Article of the Constitution of the United States. (The Governor) "as the instrument employed, or authorized, to carry into effect that Article of the Constitution (as he derives from it the authority to issue the warrant) must be regarded as acting by authority of the United States."

Potts J., in the matter of Troutman, 4th Zabriskie, p. says: "There is no doubt as to the obligation of a State to deliver up fugitives from justice on demand of the executive authority of any other State. The duty is

enjoined by the Constitution of the United States, and the mode in which it is to be performed is provided by Congress, and these constitute the supreme law of the land, to which implicit obedience is due."

Mr. Justice Baldwin, in the case of Holmes vs. Jamison, 14 Peters, p. 514, says: "The Constitution provides that, etc. (citing the second section of fourth Article) "A corresponding provision is made for fugitives from service or labor, and Congress, by act of 1793, have prescribed the mode in which the provision of the Constitution shall be carried into effect."

"It will not be pretended that these provisions do not impose upon the States of this Union an obligation as imperative, and impair their reserved rights to the same extent, as a similar stipulation in a treaty between the United States and any foreign State. Let it be assumed, that there was such a treaty with Great Britain, in relation to fugitives from justice in Canada, and a stronger case cannot be supposed; the question it involves is not difficult of solution. The object and great purpose of the Constitution and Congress, in one case, and of the treaty in the other, is to make it the duty of the State and its officers, to make the surrender on demand; but it does not follow, that it may not be done voluntarily, or without demand. The true point in issue (in that case) is, whether a State is prohibited by the Constitution from doing, of its own accord, an act which it is bound to do, whenever demanded pursuant to a law or a treaty of the United States?" And again, p. 619, "The States are enjoined by the Constitution, to surrender a fugitive from another State on demand; they will be obliged to do it under a treaty stipulated to a foreign power; and thus far, but no further, has there been, or can be, any abridgement of their power over this subject."

From this we claim, that, as a matter of fact and of law, the Governors of the States of New York and Maine, were the instruments which performed an obligation resting upon them, by force of the Constitution and Laws of the United States. That the taking of McGuire from his sureties, was by force of the same Constitution and Law. Certain it is, that if these sureties, had undertaken to prevent, or in any way interfere with, this rendition, that they would have been clearly liable to the penalties imposed by the Act of Feb. 12th, 1897. And they stand in a hard position, indeed, if the Courts of the State of Connecticut, are to punish them for not doing, that which, if they had done, the laws of the United States, would have punished them for doing; and if, for yielding a peaceable acquiescence to the laws of the United States, the Courts of the United States will not protect them.

If we are right, then, in our first claim, and these sureties were prevented from surrendering their principal, by an "act of the law," and that a law of the United States, we have to consider our second proposition, which is, whether the Court in Connecticut did not err in deciding:

Secondly: That the Constitution, and Laws of Congress passed in pursuance thereof, had not the same force in Connecticut as the laws of Connecticut, themselves would have.

The laws of the United States, passed in pursuance of the Constitution, are the supreme law of the land. If any conflict arises between such laws of the United States, so passed, and the laws of any State, the State law must yield, and in cases like the present, where there is no conflict, the same force must be given to the laws of the General Government, as under like circumstances, would be given to the State laws. The citizens of the States, are citizens of the United States; and the United States is as much bound to protect them, in its sphere, as the States are in theirs.

Potts J., in the case already cited from the 4th Zabriskie, says: "The duty (of rendition) is enjoined by the Constitution of the United States, and the mode in which it is to be performed, is provided by Congress; and these constitute the supreme law of the land, to which implicit obedience is due."

One more authority, and that from the law of Connecticut, is all we propose to cite, and that more for the purpose of showing your Honors, that it has not always been the custom of the Connecticut judiciary, to absolutely disregard the provisions of the Constitution.

Bissell J., in the case of Kellogg vs. The Union Co., 12th Conn., p. 26, says: "The principle here is settled; and it will not be denied, that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operation of the Constitutional laws, enacted by Congress, to carry into effect the powers vested in the national government."

Kent, in his Commentaries, speaking of this 4th Article, Sec. 2d, of the Constitution, says: "I am not aware that there has been any judicial opinion on this provision. And as it stands, I should apprehend, that, on the demand being made, and the documents exhibited, no discretion remained with the executive of the State, to which the fugitive had fled; and that it is his duty, to cause the fugitive to be arrested and surrendered." And again, speaking of this section, says: "It is a substantial and essential grant of power, by the people of the United States, to the government, and it partakes of a judicial character, and is fitly and constitutionally, of judicial cognizance.— *Vol.* 1, *p.* 642, *Note.*

Sedgwick, in his constitutional law, speaking of the same Article, says: "In New Jersey it has been said, that in considering this clause, it is material to observe, that it does not contain a grant. It confers no right, it is the regulation of a previously existing right. It only makes obligatory upon every member of the Confederacy, the performance of an act which previously was of doubtful obligation."

Whether your Honors are disposed, to consider it a grant of power, with Chancellor Kent, or simply the regulation of a previously existing law, can make no possible difference with this case, if we have succeeded in proving that the then principals were prevented from fulfilling the condition of their bond, by reason of an act of the supreme law of the land. What difference can it make, how the States have lost power to control the matter, whether by

granting it to the General Government, or by permitting the United States to regulate the matter in such a way as to make it "obligatory upon every member of the Confederacy."

It was claimed in the Court below, that the decision of this Court, in the case of Kentucky vs. Dennison, in respect to the power of the General Government not being able to coerce a State, or the executive thereof, to fulfill the obligation of surrendering a fugitive from labor, applied equally well to fugitives from justice. And that the clause of the Constitution, under which we seek protection, and the laws of Congress passed in pursuance of it, were not obligatory on the States.

The decision in that case, we are bound to respect, though doubting very much whether, if after the experience of the last ten years, if the case could arise untrammeled by precedent, the decision would be the same. But whether it would or not, we claim, that it is no authority whatever in the case at bar. The Governors of the various States have performed their functions precisely as the Constitution and laws require them. The obligation imposed was sufficient to make them perform their duties. The questioh here presented is, on the effect of those acts.

In obedience to a law, *certainly permissive*, if not obligatory, these several executisve have pruduced a *result;* which, we were not only powerless to avert; but which it was criminal to attempt to hinder. What difference can it make with our standing in court, if their action was legal, in what they did; whether it was voluntary or involuntary? It was equally "an act of the law." And one which should protect us in not doing, not only what it forbade us, but what it permitted them.

It has never been claimed, that these sureties were one particle to blame for not surrendering their principal; and we know of no method by, which they could relieve themselves from the embarrassment in which they are placed, by the seizure and rendition of McGuire, on this requisition. That rendition was legal, rendered so by the Constitution and laws of the United States. Connecticut is bound to respect those laws, as much as the sureties are; they are operative in, and binding on her, precisely as they are on these sureties, and to the same extent. The case stands, so far as the operation of this law is concerned, precisely as if all the parties to it, were private citizens of Connecticut. Could Connecticut, herself, have prevented this rendition? Is she to be permitted to punish us for not doing that which she herself could not have done? Especially, when that failure was produced, by the operation of a law she was bound, equally with us, to respect.

It was claimed in the Court below, that even if we were correct in our position, as to the power of the requisition, that, as a matter of fact, the requisition had spent its force, and, at the time when the bond was called, McGuire was held by the internal police regulations of the State of Maine, and not by any law of the United States. Granting, for the sake of the argument, that he was so held. How did he get there? Confessedly, by the operation of the law of the United States. And though, so far as he is concerned, the reqisition may have lost its force, as to these sureties, its effect and operation has not yet ceased. An act of the United States law took from them their bail, whom, in legal contemplation, they had ever in their keeping, with power to retake at any moment, and that law is in operation against them, so long as its force and effect prevents them from exercising that power.

The principle contended for in this case, may have a very extended application.

Suppose that McGuire had been arrested by a Marshal of the United States, for a breach of the postal or internal revenue laws; and taken from the power of his sureties, and when this bond was called, had been imprisoned for a breach of such law. Can there be any doubt that such an "act of the law" of the United States, would have been an excuse for his non-surrender, which was as operative in Connecticut, as any law in that State?

If, after McGuire had been released, he had been regularly and legally drafted in the army of the United States, been sworn in, and the Government had refused to let these sureties have him to surrender; or even suppose he had himself volunteered into the regular service; would not the Government been bound, to protect these sureties from any loss that might befall them by reason thereof? If, under these circumstances, the State judiciary had taken the same view that was taken in this case, that because the inability to surrender was occasioned, not by a State law, but a law of the United States, therefore it was no law, can it be doubted that an appeal would lie?

In Belding vs. The State, 25 Ark., p. 315, it is held: where C. is arrested on a criminal charge, in the State Court, and bailed, and subsequently arrested and imprisoned for another crime, by the *military authorities of the United States*, and therefore could not be procured, according to the terms of the recognizance, *that the sureties were discharged.— The People vs. Cushney*, 44 *Barb.*, 118.

We now propose to call your Honors attention, to a few cases that bear out the various claims that we have presented. Wherever the performance of a condition to a bond or recognizance has become impossible, by the act of the Supreme Authority of the State, it is familiar law, that the bail is

discharged; and this is so, not only in the United States, but in every civilized country. An illustration of how this principle is applied in England, is seen in Postel vs. Williams, 7 Term, p. 517.

See also:

Laflin vs. Fowler, 8 *Johnson*, 335.
State vs. Buzine, 4 *Harrington*, 572.
State vs. Schline, *do.* 577.
Johnson vs. Riley, 13 *Geo.*, 97.
2 *Humph.*, 258.
State vs. Adams, 3 *Head.*, 260.
Ingraham vs. The State, 27 *Alabama*, 17.
Hunt's Case, 3 *Peterdof's Abr.*

WILLIAM F. TAYLOR,
MORRIS W. SEYMOUR, } of Council.

Supreme Court of the United States.

No. 82.

WILLIAM F. TAYLOR, BARNABAS ALLEN AND EDWARD McGUIRE, PLAINTIFFS IN ERROR.

vs.

HENRY G. TAINTOR, TREASURER OF THE STATE OF CONNECTICUT.

BRIEF OF POINTS AND ARGUMENT,

FOR THE

DEFENDANT IN ERROR.

NELSON L. WHITE,
SIDNEY B. BEARDSLEY, } for the Defendant in Error.

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BRIEF OF POINTS AND ARGUMENT, FOR THE DEFENDANT IN ERROR.

All the facts in the case appear in the finding of the Superior Court of Connecticut (pages 9, 10 and 11, of the printed Record), and the case presented to this Court is as follows:

The defendant, Edward McGuire, being then legally imprisoned in Fairfield County, State of Connecticut, for the crime of grand larceny, the defendants, on the 24th day of September, 1866, made and executed the bail bond described in the declaration (page 6 of the printed Record), the sureties on said bond being indemnified as stated on page 11 of the said finding of the Superior Court, and thereupon said McGuire was released from imprisonment. That said McGuire was afterwards, in the month of October, 1866, arrested by the legal officers of the State of New York, upon the mandate of the Governor of the State of Maine, and was by them delivered over to the authorized agents of the State of Maine, by whom he was, on the 19th day of October, 1866, forcibly taken to the State of Maine. That on the 23d day of October, 1866, said bail bond was called and forfeited, at which time said McGuire was imprisoned in and by the State of Maine, on

a charge of burglary, of which crime he was afterwards, in the year 1867, convicted, and sentenced for fifteen years to the States Prison of Maine, where, as late as March, 1869, he was serving out said sentence.

It is perhaps implied, though certainly not clearly expressed, that prior to the said arrest of McGuire, in New York, a requisition upon the Governor of New York, for the arrest of McGuire on a charge of burglary, had issued from the Governor of Maine, the only finding upon that subject being in the words, "said requisition setting forth a charge of burglary committed in said State of Maine before the giving of said bond by said McGuire and the defendants," the "said" in the finding referring to the word "requisition," used by one of the defendants in moving for a continuance of the case in the Superior Court of Connecticut. See finding, page 10.

The finding is that the arrest of McGuire in New York was made by the officers of New York, upon the mandate of the Governor of Maine.

The plaintiffs in error claim that the judgment of the State Court of Connecticut is erroneous, on the ground that under the provisions of the Constitution of the United States they are entitled to indemnity from liability on said bail bond.

The provision in the Constitution of the United States upon which they are presumed to rely is as follows:

"A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

No claim was made in the State Court under the Act of February 12th, 1793, passed to carry into effect said Constitutional provision; nor is any such claim made here.

The defendant in error claims:

I.

That the Court of Connecticut, for aught that appears by the record, decided the case against the plaintiffs in error, without deciding the question raised here; the decision of that question not being necessary to the judgment rendered below. And that therefore this Court has no jurisdiction.

Ocean Ins. Co. vs. Polleys, 13 *Pet.*, 157.
Parmelee vs. Lawrence, 11 *Wall.*, 36.

1st. The case does not show that McGuire was arrested in New York by virtue of a warrant issued by the Governor of New York upon a requisition of the Governor of Maine—the finding being that he was arrested by the officers of New York upon the "mandate of the Governor of Maine."

2d. The record does not show that the steps prescribed by the act of Congress of February 12th, 1793, were taken by the State of

Maine to procure the surrender of McGuire, without which the Governor of New York would be under no obligation to issue his warrant for the arrest of McGuire, and could not legally issue such warrant.

It does not appear that McGuire had ever been charged with crime in the State of Maine, or that any copy of indictment found or affidavit made according to said Act, was presented to the Governor of New York.

State of Kentucky vs. Dennison, 24 *Howard*, *p.* 66.
In matter of Clark, 9*th Wendell's R.*, *p.* 212.

3d. When the bond of plaintiffs in error was called and forfeited, on the 23d day of October, 1866, McGuire was not imprisoned under any warrant issued by the Governor of New York, but such warrant, if ever issued, had been fully executed and spent by the removal of McGuire from New York to Maine, on the 19th day of October, 1866.

The restraint which prevented his appearance in the Superior Court of Connecticut, on the 23d day of October, 1866, was his imprisonment in Maine by the local authorities of Maine, and except for such imprisonment he had ample time and opportunity to go from Maine to Connecticut and save his bail, after the warrant of the Governor of New York had been fully executed.

The only question therefore presented by the case to the State Court was, whether the imprisonment of McGuire under the laws of another State when his bail bond required his presence in Connecticut, was a defence for his sureties.

The decision of the State Court upon this question is not subject to revision here.

The State Court will be presumed to have decided the case upon this ground, especially as such decision would have been in accordance with law.

Withrow vs. Commonwealth, 1 *Bush. (Ky.)*, 17.
Ingraham vs. State, 27 *Ala. R.*, *p.* 27.
United States vs. Van Fossen, 1 *Dillon*, 406.
Devine vs. State, 5 *Sneed*, 625.
United States vs. French, 1 *Gallison*, 1.
Grant vs. Fagan, 4*th East. R.*, *p.* 190.

II.

But if the Constitutional question, presented by the assignment of errors, properly arose in this case, and was essential to its decision by the State Court, so that that Court must be deemed to have decided it, we claim that there is no error in the judgment.

1st. In People vs. Bartlett, 3d Hill (N. Y.) R., p. 570, C. J. Nelson quotes approvingly an old opinion of C. J. Brian:

"There is a diversity where a condition becomes impossible by the act of God, as by death, and where by a third person or by a stranger, and where by the act of the obligor, and where by the act of the obligee. The first and last are sufficient excuses for non-performance, but the second is not, for in such case the obligor has undertaken that he can rule and govern the stranger, and in the third case it is his own act."

2d. The arrest of McGuire in the State of New York, under a warrant issued by the Governor of that State, upon the requisition of the Governor of Maine, was in no sense an act of law, merely by force of the Constitutional provision, relied upon by the plaintiffs in error. Such a warrant would have been *lawless*, except for the Act of Congress of 1793.

See opinions of Chief Justice Taney in

Kentucky vs. Dennison, cited Supra.

3d. But the provision of the Constitution in connection with the Act of Congress, of 1793, providing the mode of executing the Constitutional provision is not a law, because it creates no legal obligation upon the Governor of the State, upon whom the requisition is made, to issue his warrant.

Kentucky vs. Dennison, Supra.

4th. If the Constitutional provision, in connection with the Act of Congress, be a law, still it is not a law of Connecticut, certainly not in cases where the proceedings under it are between other States; nor is she, in any sense, a party to the law, in its application to those other States, or to the proceedings between them for the extradition of a criminal from one to the other.

The Governor of New York in issuing his warrant, was acting in aid of the administration of the local criminal law of Maine, and as a quasi magistrate of that State.

No duty is assumed by Connecticut under the Constitution, or is imposed on her by Congress, except to deliver up, criminals against the laws of either

of the other States who have fled within her borders, upon the proper steps being taken for their reclaimation.

5th. Under the circumstances of this case, if McGuire had remained in Connecticut after being bailed, it would not have been the duty of Connecticut to have surrendered him upon the requisition of the Governor of another State. Connecticut had a superior right to him, as she had first taken steps to punish him, and laid her hand upon him.

In re Troutman, 4 *Zaber.* (*N. J.*), 634.

Nor as between the State of Connecticut and Maine, was the State of New York under any obligations to deliver McGuire to Maine.

The State of New York would have respected the superior right of Connecticut to hold him, if his sureties even after the requisition had been made, had demanded him of her.

See Ingraham vs. State, Supra.

III.

It was laches on the part of his Sureties to permit him to go to the State of New York, and afterwards to be arrested and removed from the State of New York to the State of Maine. They should have prevented their principal from leaving this State,and having voluntarialy permitted him to do it, by his depositing, or causing to be deposited the amount of the penalty of the bond in their hands, they cannot now be permitted to deprive the State of Connecticut of the penalty incurred by this, their own act.

Ingraham vs. State, Supra.

IV.

If the Plaintiffs in errors claim is correct, McGuire had it in his power when the Bond was given to exonerate his Bail, and escape punishment for the heinous crime which he was charged with having committed in Connecticut. He could go into another State and procure himself to be arrested on a requisition from a third State, for some comparitively trifling offence, and held on such charge when the conditions of his Bond required his prsence in Connecticut.

NELSON L. WHITE,
SIDNEY B. BEARDSLEY, } for the Defendant in Error.